IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
THURSDAY, THE SEVENTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE MR JUSTICE N.V. RAMANA
WRIT PETITION NO : 8833 of 2004

Between:
1 Masina Challa Rao, S/o. Surya Rao,
R/o. G. Medapadu Village, Samalkot Mandal, E.G. District.
2 Smt. Nekkanti Madhavi, W/o. Mohana Murali,
D.No. 50-39-9/2/2, TPT Colony, Vishakapatnam District.
..... PETITIONER(S)

AND

1 The District Collector, E.G. District, Kakinada.
2 The Revenue Divisional Officer, Kakinada Division, Kakinada, E.G. District.
3 The Mandal Revenue Officer, Samalkot Mandal, E.G. District.
.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to to issue a writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of respondents in proposing to acquire the petitioner's land an extent of Ac.1.25 cents covered by Sy.No. 138/2A of G. Medapadu Village, Samalkot Mandal in pursuance of the notification under Section 4 (1) and section 6 declaration dt. 19-7-1999 is arbitrary, illegal, null and void, unconstitutional and violation of the principles of natural justice and contrary to the provisions of Land Acquisition Act and consequently direct the respondent authorities not to acquire the petitioner's land and to pass

For the Petitioner:MR.G.KRISHNA MURTHY

For the Respondent No.: GP FOR REVENUE

The Court Made the Following :

ORDER:

In this writ petition the petitioners pray to declare the action of the respondents in proposing to acquire their land in an extent of Ac.1-25 cents covered by Sy.No.138/2A of G. Medapadu village, Samalkot Mandal, pursuant to the notifications issued under Sections 4(1) and 6 of the Land Acquisition Act, 1894 (in short 'the Act'), as illegal and arbitrary and for a consequential direction to the respondents not to acquire the said land.

The brief facts, as stated in the affidavit filed in support of the writ petition, are that the 2nd petitioner is the absolute owner of the above mentioned land, the same having been gifted to her towards 'Pasupu Kumkuma' from his father. The 2nd petitioner having become the absolute owner, entries were made in the revenue records, and she was also issued pattadar pass book. While so, consequent upon a proposal from the 1st respondent to acquire an extent of land Ac.13-10 cents for allotment of house sites to the poor people, her land was also proposed to be acquired, and accordingly Notification under Section 4(1) and Declaration under Section 6 of the Act were simultaneously published on 19-7-1999 showing the name of the father of the 2nd petitioner as the owner of the land. It is stated that the respondents have not taken possession of the land within three months from the date of publication of the Notification under Section 4(1) of the Act, nor have they passed award within a period of two years from the date of publishing the Declaration under Section 6 of the Act, and therefore, the acquisition proceedings have elapsed. However, the respondents are now trying to acquire the said land basing on the elapsed acquisition proceedings. It is further stated that one Y.Bala Krishna Murthy, whose land was also notified for acquisition under the same proceedings had filed a writ petition No. 17292 of 2000 in this Court and the same was by order dated 27-8-2002 was allowed quashing the acquisition proceedings. Therefore, the petitioner prays to direct the respondents not to acquire the petitioners' land in question.

Heard the learned counsel for the petitioner and the learned Government Pleader Land Acquisition and with their consent the writ petition itself is taken up for hearing at the stage of admission.

The learned counsel for the petitioner submits that the respondents are trying to acquire the land of the petitioners on the basis of stale acquisition proceedings which stood elapsed by reason of long lapse of time in that the Notification issued under Section 4(1) of the Act on 19-7-1999, would continue to be in force for a period of two years from the date of publication of Declaration under Section 6 of the Act, and inasmuch as

the Declaration under Section 6 of the Act, was also issued on 19-7-1999, the acquisition proceedings after expiry of two years, stood elapsed during July, 2001. Therefore, the learned counsel for the petitioners seeks a direction to the respondents not acquire the land of the petitioners.

The learned Government Pleader for Revenue fairly admitted that the Notification, by reason of which the land of the petitioners, was sought to be acquired along with others, was quashed by this Court when it was challenged by one of the persons who was aggrieved by the land acquisition in W.P.No.17292 of 2000, which by order dated 27-8-2004 was allowed.

Be it noted that this Court by order dated 27-08-2002 after considering the case law on the subject, while allowing the writ petition No.17292 of 2000 filed by one of the land owners assailing the very same Notification and Declaration which are impugned in this writ petition, held thus:

> In view of the law declared by the Apex Court and also for the reasons aforementioned, it is evident that the declaration under Section 6 was approved and published along with notification under Sec. 4(1) without following the mandatory provision of Section 17(4) of the Act, therefore, it is void abinitio and the same is liable to be quashed. Even if the said declaration is quashed, the authorities are not precluded from issuing fresh declaration after excluding the period during which any action of proceedings to be taken in pursuance of the notification issued under Sec. 4 is stayed by an order of the court, in view of Explanation 1 to Section 6. But the same will not enure to the benefit of the authorities for the simple reason that Section 4(1) notification was published on 19-7-1999 and las such notification, even if it is taken into consideration, was published in the newspaper on 30-7-99, whereas this court admitted the writ petition on 22-9-2000 i.e., after expiry of one year period. Once declaration issued under Section 6 is quashed, in view of the law declared by the Constitutional Bench of the Apex court in **Padmasundara Rao v. State of Tamilnadu** (2002 (2) Supreme 359) Section 4(1) notification cannot be saved and the same is accordingly quashed.

In the above view of the matter, following the judgment of this Court in W.P. NO. 17292 of 2000, dated 27-8-2002 and for the reasons assigned therein, the writ petition is allowed and Section 4(1) Notification and Section 6 Declaration are quashed and all further proceedings, including taking possession of the land of the petitioner herein will be *non est* in the eye of law. No costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the 17th day of June, Two Thousand and Four.

ASSISTANT REGISTRAR

//True copy//

SECTION OFFICER

17-6-2004/asp

To

1 The District Collector, E.G. District, Kakinada.

2 The Revenue Divisional Officer, Kakinada Division, Kakinada, E.G. District.

3 The Mandal Revenue Officer, Samalkot Mandal, E.G. District.

4. 2 CCs to G.P. for Revenue, High Court Buildings (O.U.T)

5. 2 C.D. copies

6. One spare copy